

# ANNEXURE 2



communications  
& digital technologies  
Department:  
Communications & Digital Technologies  
REPUBLIC OF SOUTH AFRICA

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## TERMS OF REFERENCE FOR THE ESTABLISHMENT OF MULTI-STAKEHOLDER WORKING GROUP ON STRATEGIES TO ADDRESS MIS- AND/OR DIS-INFORMATION AND MAL-INFORMATION IN SOUTH AFRICA

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### INTRODUCTION

1. The Minister of Communications and Digital Technologies ('Minister') hereby establishes the Multi-stakeholder Working Group on Strategies to address mis- and/or disinformation and mal-information in South Africa.

### CONTEXT

2. The advent of the internet has fundamentally changed the way in which members of the public are able to communicate, socialise, learn, work, and participate. While this has presented significant opportunities for the exercise of the constitutional right to freedom of expression and access to information, it has also given rise to a number of incumbent and unique challenges regarding the dissemination of information online. However, there is a particular concern where there is publication of false information – such as mis- and/or dis-information that may infringe the constitutional right(s) of one or more persons.
3. Popular discourse generally refers to content that is intentionally and verifiably false and which seek to mislead users as “fake news”. According to contemporary views, “fake news” encompasses a spectrum of information types, ranging from relatively low-risk forms – such as honest mistakes made by members of the media, partisan political discourse, and the use of clickbait headlines – to high-risk forms – such as state and non-state actors that would try to undermine political processes through the use of various forms of malicious fabrications.<sup>1</sup>

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<sup>1</sup> European Commission, 'A multi-dimensional approach to disinformation: Report of the independent High level Group on fake news and online disinformation' (2018) (accessible at <https://ec.europa.eu/digital-single-market/en/news/final-report-high-level-expert-group-fake-news-and-online-disinformation>).

4. We acknowledge the term “fake news”, and its popular reference. However, this Working Group - in line with contemporary international legal understandings has elected not to rely on the term “fake news”, but rather on the terminology of mis- and dis-information. This preferred selection is based on our understanding that the term “fake news” is inadequate and misleading.<sup>2</sup> Further, we align with the view that the term has been appropriated by powerful actors that are instrumentalising “fake news” concerns to clamp down on the genuine news media, which is inimical to the right to freedom of expression.<sup>3</sup>
5. The mis-and/or dis-information will include term ‘fake news’. Considering that the current debates about ‘fake news’ encompass a spectrum of information types, ranging from relatively low-risk forms – such as honest mistakes made by reporters, partisan political discourse, and the use of clickbait headlines – to high-risk forms – such as foreign states or domestic groups that would try to undermine political processes through the use of various forms of malicious fabrications.
6. While mis- and/or disinformation are not new concepts, the internet has significantly changed the context in which this arises. In particular, the communication of mis-and/or disinformation via online platforms is unique in respect of the speed with which information can be conveyed; the amplification of the audience that can be reached; and the relative permanence with which information can remain online unless proactive steps are taken to remove it.
7. The distinction between mis- and disinformation may be understood as follows:<sup>4</sup>
  - a. “[D]isinformation is generally used to refer to deliberate (often orchestrated) attempts to confuse or manipulate people through delivering dishonest information to them. This is often combined with parallel and intersecting communications strategies and a suite of other tactics like unauthorized computer system access (also known as hacking) or compromising of persons. Mis-information is generally used to refer to misleading information created or disseminated without manipulative or malicious intent.
  - b. Both are problems for society, but disinformation is particularly dangerous because it is frequently organised, well resourced, sustained and reinforced by automated technology.” Mis- and/or and mal-information disinformation may have far-reaching consequences, cause public harm, be a threat to democratic political and policy-making processes, and may even put the protection of the

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<sup>2</sup> Id at p 10.

<sup>3</sup> Id.

<sup>4</sup> UNESCO, ‘Journalism, ‘fake news’ and disinformation: Handbook for journalism education and training’, 2018 at p 7, accessible at <http://unesdoc.unesco.org/images/0026/002655/265552E.pdf>. UNESCO notes further that false information can arise in a number of different forms: false connection, in which headlines, visuals or captions do not support the content; misleading content, in which there is a misleading use of information to frame issues or individuals in certain ways, such as by cropping photographs, or choosing quotes or statistics selectively; false context, in which genuine information is re-circulated outside of its original context; imposter content, in which journalists have their by-lines used alongside articles they did not write, organisations’ logos used in videos or images they did not create; manipulated content, in which genuine content is manipulated to deceive, such as an image being manipulated to impute an improper relationship between two people; or fabricated content, which includes completely fabricated ‘news’ websites or fabricated images.

public's health, security and environment at risk. It erodes trust in public and private institutions, as well as the media, and harms democracy by hampering the ability of the public to make informed decisions. It can polarise debates, create or deepen tensions in society, incite violence, discrimination or hostility against particular groups, undermine electoral processes, or impair freedom of opinion and expression.

- c. The spread of mis- and/or disinformation is generally facilitated by social-media channels. The UNESCO's record of encouraging optimum performance and self-regulation by journalists, as an alternative to the risk of having state intervention to deal with perceived problems in the freedom of expression realm is fully respected. However, combatting, mitigating and ameliorating the spread of mis and dis-information requires a multi-stakeholder approach. While social media companies are making efforts to address mis and disinformation, they cannot and should not be expected to be the lead partners in addressing issues that impact nations and peoples in different places, with different laws, principles and issues. Government too has a critical role to play, but on their own they don't have the insight and power that the social media companies have. Civil society and other independent bodies have a role to play in ensuring that in all the efforts it is the public interest that is front and centre and that a rights-based approach is adopted.
8. Accordingly, this Multi-stakeholder Working Group on Strategies to address mis- and/or dis-information and mal-information in South Africa ("the Working Group") is established as following the Policy Directions issued by the Minister of Communications and Digital Technologies under Regulation 10(8) of the Regulations under Disaster Management Act, 2002 (Act No. 57 of 2002) in 26 March 2020 in an effort to address the challenges presented by mis- and dis-information and mal-information to the exercise and enjoyment of rights by members of the public<sup>5</sup>.

## **GUIDING PRINCIPLES**

9. The work of the Working Group is to be underpinned by the following guiding principles:
  - a. The right to freedom of expression, contained in section 16 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996 - "the Constitution") must be respected, protected and promoted. This is particularly important during an election period, as robust engagement and debate is a necessary component of the democratic process. The right applies "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb".<sup>6</sup>

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<sup>5</sup> Government Notice 26 March 2020, No.43164 Issued by the Minister of Communications and Digital Technologies

<sup>6</sup> De Reuck v Director of Public Prosecutions (Witwatersrand Local Division) and Others, Case No. CCT 05/03, Constitutional Court of South Africa at para 49.

- b. Any limitation of the right to freedom of expression must be narrowly circumscribed in accordance with section 36 of the Constitution. General prohibitions on the dissemination of information based on vague and ambiguous ideas, including 'fake news', are incompatible with a justifiable limitation on the right to freedom of expression.
- c. Any measures proposed must be cognisant of, and give appropriate effect to, the nuances of the right to express any opinions without censorship or restraint (free speech). Such measures should distinguish between mis- and/or disinformation, on the one hand, and other forms of legitimate free speech such as journalistic, artistic or satirical expression, on the other hand.
- d. Any criminal sanctions for speech risk having a chilling effect on the exercise of the right to freedom of expression and must be approached with heightened caution.
- e. An independent and credible media is essential to countering mis- and/or disinformation and mal-information by disseminating accurate, timely and trusted news and commentary to the general public.

#### **MANDATE OF THE WORKING GROUP**

10. The work of the Working Group includes the following mandate:
- a. To formulate a working definition of the terms "mis-information", "dis-information" and mal-information, including the definitional elements that comprise these terms.
  - b. To develop an evidence base on the causes, forms and disseminators of mis- and/or disinformation and mal-information in South Africa.
  - c. To map existing laws, policies and initiatives aimed at addressing mis- and/or disinformation and mal-information in South Africa.
  - d. To understand the potential impacts and risks that mis- and/or dis-information and mal-information pose to democratic processes, including all elections, in South Africa.
  - e. To engage relevant stakeholders and experts on responses to mis- and/or disinformation and mal-information in South Africa as well as abroad and identify the roles and responsibilities to be played by such stakeholders.
  - f. To consider measures to support independent and credible media and fact-checking organisations as a means of countering mis- and/or dis-information and mal-information.
  - g. To propose strategies and recommendations to address mis- and/or disinformation and mal information for South Africa in the short-, medium- and long-term.

#### **COMPOSITION OF THE WORKING GROUP**

##### ***Chairperson of the Working Group***

11. The Chairperson of the Working Group is preferably to be a retired Justice. Alternatively, the Chairperson may be someone who, has suitable experience and

knowledge in relation to the issues at hand, and has a demonstrable commitment to democracy, freedom of expression, access to information, openness, accountability and independence. Such a person must also be able to demonstrate no conflicts of interest. Further attributes to be considered may include:

- Sound understanding of the South Africa's constitutional legal framework.
  - Good understanding of digital rights and freedoms.
  - Reputable person with a credible record.
  - Trusted by the general society.
  - Non-partisan individual.
- a. A list of three candidates will be submitted to the Minister of Communications and Digital Technologies for consideration and appointment.
  - b. The Chairperson shall be responsible overall for ensuring that the mandate of the Working Group is met and delivered upon.
  - c. The Chairperson, may, from time to time, elect to appoint additional members to the Working Group with suitable experience and knowledge in relation to the issues at hand.

#### ***Secretariat of the Working Group***

12. The Secretariat of the Working Group is to be spearheaded by the Department of Communication and Digital Technologies (DCDT) and supported by Government Communication and Information System (GCIS) and by Media Monitoring Africa (MMA). The DCDT shall be responsible for the administration of the Working Group with the support of GCIS. MMA shall be responsible for the coordination of the Working Group.

#### ***Members of the Working Group***

13. As a point of departure, the Working Group will comprise of a founding Working Group of initiating members from the DCDT, MMA and GCIS. The founding members will be responsible for launching the Working Group.
14. The members of the Working Group are to include the following:
  - a. Representatives with appropriate experience from relevant government departments and its entities, such as DCDT, the Department of Justice and Constitutional Development (DoJ & CD), GCIS and Council of Science and Industrial Research (CSIR), South African Police Service (SAPS), Communications at Presidency and State Security Agency (SSA).
  - b. Representatives with appropriate experience from relevant constitutionally mandated bodies, including the South African Human Rights Commission and the Electoral Commission of South Africa.

- c. Representatives with appropriate experience from relevant regulatory bodies, such as the Information Regulator, the Independent Communications Authority of South Africa (ICASA), Film and Publication Boards (FPB), and South African Communication Forum (SACF) and Internet Service Providers (ISPs).
- d. Representatives with appropriate experience from relevant media and industry bodies, such as the South African National Editors' Forum, the Press Council of South Africa, the Broadcasting Complaints Commission of South Africa and the Internet Service Providers' Association. Such representatives may also be from recognised international bodies and or groups such as UNESCO.
- e. Representatives with appropriate experience from relevant technology and social media platforms, such as Google, Twitter, Facebook and LinkedIn.
- f. Any other person with appropriate experience from academia, civil society, the legal sector or other industry, following an open and public application process.

***Official Appointment of Working Group Members***

15. The members of the Working Group are to be appointed as per the following guiding process:
- a. Experienced representatives from the relevant government departments, regulatory bodies, constitutionally mandated bodies, and related government entities shall be appointed by the DCDT following a formal invitation to the relevant institutions by the Minister and/or Director-General. Appointments should reflect a diversity of members, representative of a broad cross-section of the population.
  - b. The relevant government departments and/or entities as envisaged above shall nominate at least two (2) representatives to the Working Group who have the relevant experience required by the Working Group
  - c. The appointment of the Working Group members shall only be for one (1) term as per the mandate of the Working Group. However, the term may be extended at the discretion of DCDT.
  - d. DCDT shall invite a number of representatives from the relevant media and industry bodies at its own discretion to serve in the Working Group.
  - e. The Working Group may co-opt for a limited period as determined by the Working Group other representatives with appropriate experience from each of the relevant technology and social media platforms, academia, civil society, legal sector or any other relevant industry in order to assist the Working Group to achieve its mandate. These representatives may play an advisory role and may not have any voting rights on the policy issues in the Working Group.
  - f. The membership of a Working Group representative shall automatically cease if a representative does not attend and/or contribute to the Working Group activities for two consecutive meetings.

## **WORKING METHODS**

16. All persons who form part of the Working Group shall undertake their responsibilities on a voluntary basis and in good faith, in an independent manner, and will be selected based on their expertise and anticipated contributions to meeting the mandate of the Working Group.
17. The Working Group shall meet on a regular basis, and no less than once per month for the duration of the mandate or as may be deemed appropriate by the Chairperson of the Working Group.
18. The Working Group shall engage in public consultations with relevant stakeholders and experts, and will further seek to raise public awareness about the work of the Working Group.
19. The Working Group may establish sub-committees, as may be deemed appropriate, and invite other stakeholders and experts to participate in such sub-committees.
20. The Working Group may engage technical and other experts in order to discharge its mandate, following an open and public application process, with the final selection to be made by the Chairperson of the Working Group.
21. DCDT shall be responsible for providing administrative support to the Working Group, with support from GCIS as the Secretariat.
22. At the discretion of the Chairperson, a member or members of the working group may be tasked to raise resources for any operational, and or research costs that may be incurred in the fulfilment of the mandate of the Working Group's deliverables.

## **MILESTONES AND DELIVERABLES**

23. The Working Group is established for the period of 12 consecutive months from the date of establishment, which may be renewed by the Minister of Communications and Digital Technologies on an annual basis.
24. In line with its mandate, the Working Group shall deliver the following documents:
  - a. An interim report on strategies and recommendations to address mis- and/or disinformation and mal-information in South Africa, with a particular focus a strategy relevant to election periods. This is to be delivered within 4 months after the establishment of the Working Group.
  - b. A first draft of the final report on strategies and recommendations to address mis- and/or disinformation and mal-information in South Africa, which is to be made available for public comment following Minister's approval.

- c. A final report on strategies and recommendations to address mis- and/or disinformation and mal-information in South Africa. This is to be delivered within 12 months from the date of establishment.
- d. The Working Group may publish any further reports or other documents as may be deemed appropriate to meet its mandate.
- e. All deliverables prepared by the Working Group are to be presented to Parliament and simultaneously made publicly available on the website of the Department of Communications and Digital Technologies.

**End.**